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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,098	04/09/2004	Pu-Yang Yeh		1703

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EXAMINER
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PARKER, BRANDI P

ART UNIT	PAPER NUMBER
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3623

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08/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,098	<b>Applicant(s)</b> YEH ET AL.	
	<b>Examiner</b> BRANDI P. PARKER	<b>Art Unit</b> 3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/09/2004</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

1. Claims 1-11 are pending in this Office Action.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).
3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 4-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

7. Claim 4 is directed towards a performance assessing method using schedule related data associated with an employee. As the claims are not sufficiently tied to an apparatus, such as a computer, and/or do not transform the underlying subject matter (from your claim) to a different state, the claimed method is non-statutory and therefore rejected under 35 U.S.C. 101.

8. Claims 5-11 are also rejected for failing to be sufficiently tied to an apparatus and for being dependent upon rejected claim 4.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3623

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-5 and 10-11 are rejected under 35 U.S.C. 102(e) as being anticipated by over Zeif (US 7209859).

11. With respect to claims 1, 3, and 4 Zeif teaches a performance assessing system comprising a database and a plurality of client computers connected with an application server, the application server being connected with a product machining scheduling system, wherein:

a. the database stores a plurality of products machining documents and a plurality of performance assessing tables of employees (column/line 11/54-56, regarding data collection table storing real time production data); and

b. the application server comprises:

i. a machining status tracing module for collecting daily schedule results from the product machining scheduling system, storing the schedule results in a corresponding products machining document, and storing each product's machining status, actual starting time and actual

finishing time in the products machining document (column/line 12/54-60, regarding schedule shift time and production run time);

ii. a performance assessing module for generating a starting time record and a finishing time record for each product according to the products machining documents, computing an employee's work hours and work efficiency, analyzing the employee's work quality, and storing the starting time record, the finishing time record, the employee's work hours, the employee's work efficiency, and the employee's work quality in a corresponding employee performance assessing table (column/line 29/49-61, regarding tracking employee efficiency including employee's daily hours); and

iii. a performance report generating module for generating a performance report according to the work hours, the work efficiency, and the work quality of the employee stored in the performance assessing table (column/line 6/32-35).

12. As to claim 2 and 5, Zeif teaches the performance assessing system as described in claim 1, wherein the machining status tracing module comprises a schedule results collecting sub-module and a finished products information maintaining sub-module, wherein:

c. the schedule results collecting sub-module collects daily schedule results from the product machining scheduling system, and stores the schedule results in the products machining documents; and the finished products information maintaining sub-module records and stores the actual starting times, the actual finishing times, and the machining statuses of the products in the performance assessing tables (column/line 24/23-41, regarding equipment tracking interface).

13. With respect to claim 10, Zeif teaches the performance assessing method as described in claim 4, wherein the step of analyzing the work quality of the employee comprises:

d. checking whether the products are behind or ahead of schedule according to the machining statuses of the products in the performance assessing table of the employee, and storing the checking results in the performance assessing table of the employee (column/line 9/ 36-40, regarding the interactive screen displaying real-time data including how far ahead or behind schedule the employee is in producing units); and

e. inspecting the quality of the products finished by the employee, and storing the inspection results in the performance assessing table of the employee (column/line 36/22-30, regarding quality inspection station and collected data being stored and reported).

Art Unit: 3623

14. As to claim 11, Zeif teaches the performance assessing method as described in claim 10. Wherein the quality of the products checked may be passed or rejected consist of language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. MPEP §2106 II C

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeif (US 7209859).

17. Regarding claims 6-9, Zeif teaches the method in claim 4, the provides the work hours, work efficiency and the scheduled work time for each product finished by the employee (Figures 16a-d, where a particular is associated with a workstation where a specific product is produced). The actual start time at each particular station begins when the employee inserts and employee identification card (column/line 12/45-48).



Art Unit: 3623

Because the numbers required for claims 6-9 are provided in Zeif, a predictable result would be to utilize old and well known mathematical methods to calculate specific data. Therefore, it would have been obvious to one with ordinary skill in the art to perform simple arithmetic on the data provided by the system in Zeif to produce work hours, work efficiency, scheduled work time, and actual work time.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Webb, Jr. et al (US 481962, regarding time clock system with productivity analysis capability), Brunner et al (US 6681197, regarding production analysis system), Garcia et al (US 2004/0093256, regarding system for analyzing employee schedules).

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3623

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/  
Examiner, Art Unit 3623

/Andre Boyce/  
Primary Examiner, Art Unit 3623